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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Declaration of minimum humanitarian standards

Working paper submitted by Mr. Theo van Boven and Mr. Asbjorn Eide

The attention of the Sub-Commission is drawn to the attached Declaration of minimum humanitarian standards adopted by an expert meeting convened by the Institute for Human Rights, Abo Akademi University, in Turku/Abo, Finland (30 November - 2 December 1990).

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DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 30 November - 2 December 1990 (list of participants annexed).

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;
Considering that situations of internal violence, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;
Concerned that in such situations human rights and humanitarian principles have often been violated;
Recognizing the importance of respecting existing human rights and humanitarian norms;
Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts do not adequately protect human beings in situations of internal violence, disturbances, tensions and public emergency;
Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;
Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;
Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom,

from the principles of humanity and the dictates of public conscience;
Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, disturbances, tensions and public emergency;
Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening co-operation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Now, therefore,...
Proclaim this Declaration of Minimum Humanitarian Standards

Article 1

This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as a person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.
2. The following acts are and shall remain prohibited:
   a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
   b) collective punishments against persons and their property;
   c) the taking of hostages;

d) practising, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;
e) pillage;
f) deliberate deprivation of access to necessary food, drinking water and medicine;
g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.
2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.
3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.
4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.
2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the objective to be achieved.
3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.
2. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.
2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.
3. In countries which have not yet abolished the death penalty, sentences of death shall be carried out only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under eighteen years of age at the time of the commission of the offence.
4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for a trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;

b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

c) anyone charged with an offence is presumed innocent until proved guilty according to law;

d) anyone charged with an offence shall have the right to be tried in his or her presence;

e) no one shall be compelled to testify against himself or herself or to confess guilt;

f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;

g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in or allowed to join armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of eighteen to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are

recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every circumstance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead; prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.
2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, disturbances, tensions or public emergency, humanitarian organizations shall be granted all the facilities necessary to enable them to carry out their humanitarian activities.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, disturbances, tensions or public emergency.

Article 18

1. Nothing in the present standards shall be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instrument.
2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

Turku/Åbo, 2 December 1990

MINIMUM HUMANITARIAN STANDARDS
International Symposium, Turku/Åbo 30 November - 2 December 1990

List of Participants:

Gudmundur Alfredsson, Geneva

Theo van Boven, Maastricht

Luigi Condorelli, Geneva

Leandro Despouy, Buenos Aires

Krzysztof Drzewicki, Gdansk and Oslo

Asbjørn Eide, Oslo

Katarina Frostell, Turku/Åbo

Hans-Peter Gasser, Geneva

Francoise Hampson, Colchester

Lauri Hannikainen, Helsinki and Turku/Åbo

Raija Hanski, Turku/Åbo

Göran Melander, Lund

Theodor Meron, New York

Lars Adam Rehof, Copenhagen

Allan Rosas, Turku/Åbo

Martin Scheinin, Helsinki

Emile K.M. Yakpo, London and Accra